

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE PEREZ,

Defendant and Appellant.

E071358

(Super.Ct.No. FVI1500163)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,
Judge. Affirmed.

Enrique Perez, in pro. per.; and John F. Schuck, under appointment by the Court
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Enrique Perez tortured and abused his girlfriend's two-year-old son. Pursuant to a negotiated plea agreement, defendant eventually pled no contest to torture (Pen. Code, § 206; count 1)¹ and lewd or lascivious act on a child (§ 288, subd. (a); count 5). In return, the remaining charges and allegations were dismissed, and defendant was sentenced to a stipulated term of eight years on count 5 plus life with the possibility of parole on count 1. Defendant was awarded 1,526 days of credit for time served. Defendant appeals from the judgment. Based on our independent review of the record, we find no error and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND²

Defendant lived with his girlfriend and her four children, ages two to six, in Needles, California. On January 3, 2015, defendant's girlfriend brought her two-year-old son (John Doe) to a medical center for a broken leg. She informed hospital staff, doctors, and law enforcement that she did not know how her son broke his leg. Upon examination by doctors, John Doe was found to have human bite marks on his buttocks, anus, genitals,

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The factual background is taken from the police report and the probation officer's report.

stomach, leg, and head. John Doe also had a rib fracture and evidence of brain cell injury.

Initially, defendant and his girlfriend denied any knowledge or involvement in John Doe's injuries. Defendant later admitted to causing the injuries to John Doe out of anger and frustration stemming from his past history of abuse as a child. Defendant stated that he used his teeth to bite John Doe multiple times and on numerous occasions. Defendant also admitted to grabbing John Doe by the torso and shaking him violently back and forth in the air, causing the rib fractures and brain cell injury. Defendant further admitted to grabbing John Doe upside down by his leg and shaking/twisting him while telling him to "Shut the f[] up," causing the spiral fracture to his leg.

After the preliminary hearing on September 14, 2016, an information was filed charging defendant with one count of torture (§ 206; count 1); one count of child abuse (§ 273a, subd. (a); count 2); and two counts of oral copulation or sexual penetration with a child 10 years old or younger (§ 288.7, subd. (b); counts 3 and 4). As to count 2, the information also alleged that defendant personally inflicted great bodily injury on John Doe (§ 12022.7, subd. (d)).

On June 15, 2018, the People orally amended the information to add count 5, lewd or lascivious act on a child (§ 288, subd. (a)). Defendant thereafter pled no contest to count 1 and count 5, in exchange for a stipulated sentence of eight years on count 5, life with the possibility of parole on count 1, and dismissal of the remaining charges and enhancement allegation. Prior to pleading no contest, defendant indicated to the court

that he had read, initialed, and signed the plea agreement form. Defendant also stated that he understood everything on the plea form and that before he initialed and signed the form he went over everything on the form with his counsel. In addition, defendant acknowledged his constitutional rights and indicated his willingness to waive those rights. Defendant further indicated that he understood the plea agreement and the consequences of pleading no contest. In response to the court's inquiry of whether anyone had made promises to him or used any threats or violence in order to get him to plead no contest, defendant answered in the negative. In response to the court's query of whether he had enough time to speak with his attorney regarding his rights, potential defenses, penalties, punishments, and future consequences and whether he understood his rights, defendant answered "Yeah" to both questions. Defendant's counsel indicated to the court that he had adequate time to speak with defendant about his case, that he had gone over the declaration and plea form with defendant, and that he was satisfied defendant understood everything on the form.

After directly examining defendant, the court concluded that defendant read and understood his plea form and that he understood the nature of the charges, the consequences of the plea, and his constitutional rights. The court further found that defendant had personally and orally entered his plea in open court and that he had knowingly, intelligently, and voluntarily entered the plea. The court also concluded that defendant knowingly, intelligently, freely, and voluntarily waived his constitutional rights and that there was a factual basis for the plea. The parties stipulated to a factual basis for

the plea based upon the amended information, preliminary hearing transcript, and the police reports. The matter was continued for pronouncement of judgment and sentencing.

On September 7, 2018, the trial court sentenced defendant in accordance with the plea agreement to the stipulated term of eight years on count 5, plus a consecutive term of life with the possibility of parole on count 1. The remaining counts and enhancement allegation were dismissed, and defendant was awarded 1,526 days of presentence credit for time served.

On September 24, 2018, defendant filed a timely notice of appeal. He did not request a certificate of probable cause.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Upon examination of the record, counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issue, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his two-page letter brief, defendant asserts that he was pressured into pleading guilty. He claims that he “had no other choice” because his attorney told him to sign the plea form or he would never get out of prison. He also asserts that after his

attorney informed him that he would receive 355 years to life, he “got scared” and “signed” the plea agreement. Defendant further asserts that the evidence does not support count 5 or evidence of physical abuse.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Defendant’s claims are challenges to the validity of the plea. Such challenges cannot be raised without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098-1099; *People v. Panizzon* (1996) 13 Cal.4th 68, 74-75.) Furthermore, the record amply supports the trial court’s conclusion that defendant was properly advised of his constitutional rights before entering the plea and that his waiver of those rights was knowing, intelligent, and voluntary. The record also shows that the plea was not induced by coercion, threats, duress, or pressure. Finally, because defendant entered a no contest plea, he cannot challenge the sufficiency of the underlying evidence. (*People v. Wallace* (2004) 33 Cal.4th 738, 750.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.